IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

REGINA HOLLAND-JOHNSON,	)	DIVISION ONE
Appellant,	)	No. 61935-7-I
v.	)	UNPUBLISHED OPINION
CONNIE J. PARNELL, a single woman,	)	
Respondent.	)	FILED: June 8, 2009

Dwyer, A.C.J. — Regina Holland-Johnson fell down the back stairs of her apartment building, injuring herself. She sued her landlord, Connie Parnell, alleging that Parnell's negligent maintenance of the stairs had caused her fall. A jury determined that Parnell had indeed negligently maintained the stairs, but that the condition of the stairs had not caused Holland-Johnson's fall. Holland-Johnson appeals, contending that this factual determination is without support in the record. Because testimony was introduced at trial by which the jury could reasonably have concluded that Holland-Johnson's fall was caused by the combination of the weather, her unusual method of descending the stairs, and the type of footwear that she was wearing, we affirm.

I

Holland-Johnson lived in a Seattle apartment complex owned by Parnell. The back stairway of the building was the one nearest to Holland-Johnson's second-floor apartment.

One evening, Holland-Johnson was at home watching the nightly news on television. Outside, it was raining very heavily. It had been raining heavily for several consecutive days. The news program that Holland-Johnson was watching was broadcasting a story about the possibility that retaining walls could collapse due to the unusually sodden condition of the soil. Holland-Johnson remembered that she had parked her car at the base of a retaining wall and decided to move it based on what she had seen on the television.

Holland-Johnson—who described herself while testifying as a "big girl" with "a big foot"—was unable to descend the rear stairs of her apartment building in the normal fashion. She testified that, rather, based on the size of her feet, she had "to turn sideways to go down." Holland-Johnson testified that when descending stairs in this fashion, "you had to really be careful because when it was wet it was an issue."

When Holland-Johnson went outside to move her car, she was wearing house slippers. Immediately after she exited the building—although she could not recall if she had even taken the first step down the stairway—she slipped and tumbled down the entire stairway, breaking her ankle on the descent.

Holland-Johnson then brought this lawsuit against Parnell, alleging that her fall had been caused by Parnell's negligent maintenance of the stairway.

Holland-Johnson introduced assorted expert testimony at trial, which was generally aimed at conveying the opinion that the unsafe condition of the stairway had been the cause of her fall. E.g., Report of Proceedings (RP) (May 21, 2008) at 97 (testimony of Stan Mitchell). Parnell introduced competing testimony aimed at refuting this allegation. E.g., RP (May 27, 2008) at 48 (testimony of Mark Lawless).

At the conclusion of trial, the jury entered a special verdict. The verdict form stated:

> QUESTION 1: Was the defendant negligent?
> ANSWER: Yes (Write "yes" or "no")
> *(INSTRUCTION: If you answered "no" to Question 1, sign this verdict form. If you answered "yes" to Question 1, answer Question 2.)*
>
> QUESTION 2: Was the defendant's negligence a proximate cause of *[injury] [damage]* to the plaintiff?
> ANSWER: No (Write "yes" or "no")
> *(INSTRUCTION: If you answered "no" to Question 2, sign this verdict form. If you answered "yes" to Question 2, answer Question 3.)*

The presiding juror then signed the verdict form. The trial court accepted the verdict and entered judgment in Parnell's favor.

Holland-Johnson appeals.

II

Holland-Johnson's sole contention on appeal is that insufficient evidence was introduced at trial to allow the jury to reach the factual conclusion that something other than Parnell's negligent upkeep of the stairway was the proximate cause of Holland-Johnson's fall. This contention is meritless.

"Overturning a jury verdict is appropriate only when it is clearly unsupported by substantial evidence." Burnside v. Simpson Paper Co., 123 Wn.2d 93, 107-08, 864 P.2d 937 (1994). Substantial evidence exists where there is sufficient evidence to persuade a rational, fair-minded person of the truth of the premise. Winbun v. Moore, 143 Wn.2d 206, 213, 18 P.3d 576 (2001) (quoting Canron, Inc. v. Fed. Ins. Co., 82 Wn. App. 480, 486, 918 P.2d 937 (1996)). "In reviewing the evidence, the appellate court does not reweigh the evidence, draw its own inferences, or substitute its judgment for the jury." Westmark Dev. Corp. v. City of Burien, 140 Wn. App. 540, 557, 166 P.3d 813 (2007), review denied, 163 Wn.2d 1055 (2008).

"Proximate causation is generally an issue for the fact finder . . . [and] has two elements: factual cause and legal cause." Shah v. Allstate Ins. Co., 130 Wn. App. 74, 80, 121 P.3d 1204 (2005). "To establish cause in fact, a claimant must establish that the harm suffered would not have occurred but for an act or omission of the defendant. . . . Cause in fact is usually a question for the jury; it may be determined as a matter of law only when reasonable minds can not differ." Joyce v. Dep't of Corr., 155 Wn.2d 306, 322, 119 P.3d 825 (2005).

Here, Holland-Johnson challenges the jury's determination of cause in fact. According to Holland-Johnson, the jury could not reasonably have concluded that something other than Parnell's negligence caused her to fall down the stairs. But, as Parnell points out, Holland-Johnson's own testimony established that Holland-Johnson (1) was wearing slip-on footwear that might

have been inappropriate in relation to the weather, (2) descended the stairs in an unusual fashion that increased her chance of falling, especially in rainy conditions, and (3) might not actually have been on the stairs themselves at the time that she slipped. We fail to see why it would have been unreasonable for the jury to conclude from this testimony that some combination of the weather conditions, Holland-Johnson's choice of footwear, and Holland-Johnson's method of ambulating caused her fall, rather than the condition of the stairs themselves. Stated another way, we cannot say that the jury—which, unlike us, heard the presentation of the evidence first-hand—acted irrationally by concluding that, although the stairway was negligently maintained, that condition did not, in fact, precipitate Holland-Johnson's fall. Holland-Johnson fails to persuasively articulate any reason, legal or factual, why the jury was required to disbelieve the testimony (much of it Holland-Johnson's own) from which it could be inferred that Holland-Johnson's fall was caused by something other than the condition of the stairs.

Affirmed.

Dwyer, A.C.J.

WE CONCUR:

Cox, J.